

House Bill 1313 (AS PASSED HOUSE AND SENATE)

By: Representatives Golick of the 34<sup>th</sup>, Willard of the 49<sup>th</sup>, Richardson of the 19<sup>th</sup>, Roberts of the 154<sup>th</sup>, Smith of the 129<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 8, 22, 23, and 36 of the Official Code of Georgia Annotated, relating to  
2 buildings and housing, eminent domain, equity, and local government, respectively, so as to  
3 provide for the comprehensive revision of provisions regarding the power of eminent  
4 domain; to provide for a short title; to change certain provisions regarding a housing  
5 authority's power of eminent domain; to provide for a new definition of blighted properties;  
6 to provide for other definitions; to provide for a public use requirement for exercising the  
7 power of eminent domain; to change certain provisions relating to the power of eminent  
8 domain and the presumption of a public use; to provide for attorney fees in certain cases  
9 challenging the use of eminent domain; to provide certain exemptions to the applicability of  
10 the power of eminent domain to public utilities; to provide for certain changes regarding  
11 eminent domain to require a public use; to change certain provisions regarding when the use  
12 of eminent domain is allowed; to provide guidelines for the use of condemnation; to provide  
13 for practice and procedure relative to condemnation; to provide for testimony relative to the  
14 value of condemned property; to provide for expedited hearings; to provide that the  
15 Department of Community Affairs produce a standard notice of rights form; to repeal  
16 provisions relating to certain appeals from assessor's awards; to change compensation for  
17 special masters; to change provisions relating to the right of appealing the award of the  
18 special master in condemnation proceedings; to change provisions relating to the use of  
19 condemnation for waterworks; to grant standing to municipalities, counties, and housing  
20 authorities to seek certain equitable remedies and proceedings; to provide for certain  
21 notification requirements; to provide for certain restrictions regarding the use of eminent  
22 domain under or in connection with a redevelopment plan and urban redevelopment; to  
23 change certain provisions regarding public hearings relating to redevelopment plans; to  
24 provide for the reconveyance of condemned property under certain circumstances; to provide  
25 for reimbursement of reasonable costs and expenses incurred because of condemnation  
26 proceedings; to provide for certain exemptions; to provide for revisions for purposes of  
27 conformity; to provide for related matters; to provide for an effective date and for  
28 applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

This Act shall be known and may be cited as "The Landowner's Bill of Rights and Private Property Protection Act."

**SECTION 2.**

Title 8 of the Official Code of Georgia Annotated, relating to buildings and housing, is amended by inserting a new Code section in Part 2 of Article 1 of Chapter 3, relating to the powers of housing authorities generally, to read as follows:

"8-3-31.1.

(a) As used in this Code section, the term 'public use' shall have the meaning specified in Code Section 22-1-1.

(b) Any exercise of the power of eminent domain under this chapter or Chapter 4 of this title must:

(1) Be for a public use; and

(2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10."

**SECTION 3.**

Title 22 of the Official Code of Georgia Annotated, relating to eminent domain, is amended by striking Code Section 22-1-1, relating to eminent domain definitions, and inserting in its place a new Code section to read as follows:

"22-1-1.

As used in this title, the term:

(1) 'Blighted property,' 'blighted,' or 'blight' means any urbanized or developed property which:

(A) Presents two or more of the following conditions:

(i) Uninhabitable, unsafe, or abandoned structures;

(ii) Inadequate provisions for ventilation, light, air, or sanitation;

(iii) An imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe respecting which the Governor has declared a state of emergency under state law or has certified the need for disaster assistance under federal law; provided, however, this division shall not apply to property unless the relevant public agency has given notice in writing to the

property owner regarding specific harm caused by the property and the owner has failed to take reasonable measures to remedy the harm;

(iv) A site identified by the federal Environmental Protection Agency as a Superfund site pursuant to 42 U.S.C. Section 9601, et seq., or environmental contamination to an extent that requires remedial investigation or a feasibility study;

(v) Repeated illegal activity on the individual property of which the property owner knew or should have known; or

(vi) The maintenance of the property is below state, county, or municipal codes for at least one year after notice of the code violation; and

(B) Is conducive to ill health, transmission of disease, infant mortality, or crime in the immediate proximity of the property.

Property shall not be deemed blighted because of esthetic conditions.

(2) 'Common carrier' means any carrier required by law to convey passengers or freight without refusal if the approved fare or charge is paid.

(3) 'Condemnor' or 'condemning authority' means:

(A) The State of Georgia or any branch or any department, board, commission, agency, or authority of the executive branch of the government of the State of Georgia;

(B) Any county or municipality of the State of Georgia;

(C) Any housing authority with approval of the governing authority of the city or county as provided in Code Section 8-3-31.1;

(D) Any other political subdivision of the State of Georgia which possesses the power of eminent domain; and

(E) All public utilities that possess the right or power of eminent domain.

(4) 'Economic development' means any economic activity to increase tax revenue, tax base, or employment or improve general economic health, when the activity does not result in:

(A) Transfer of land to public ownership;

(B) Transfer of property to a private entity that is a public utility;

(C) Lease of property to private entities that occupy an incidental area within a public project; or

(D) The remedy of blight.

(5) 'Each person with a legal claim' means the owner of the property or of any remainder, reversion, mortgage, lease, security deed, or other claim in the property.

~~(1)~~(6) 'Interest' means any title or nontitle interest other than fee simple title.

~~(2)~~(7) 'Persons' means individuals, partnerships, associations, and corporations, domestic or foreign.

~~(3)~~(8) 'Property' means fee simple title.

(9)(A) 'Public use' means:

(i) The possession, occupation, or use of the land by the general public or by state or local governmental entities;

(ii) The use of land for the creation or functioning of public utilities;

(iii) The opening of roads, the construction of defenses, or the providing of channels of trade or travel;

(iv) The acquisition of property where title is clouded due to the inability to identify or locate all owners of the property;

(v) The acquisition of property where unanimous consent is received from each person with a legal claim that has been identified and found; or

(vi) The remedy of blight.

(B) The public benefit of economic development shall not constitute a public use.

(10) 'Public utility' means any publicly, privately, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil products, water, steam, clay, waste, storm water not connected with highway drainage, and other similar services and commodities, including publicly owned fire and police and traffic signals and street lighting systems, which directly or indirectly serve the public. This term also means a person, municipal corporation, county, state agency, or public authority which owns or manages a utility as defined in this paragraph. This term shall also include common carriers and railroads."

#### SECTION 4.

Said title is further amended by striking Code Section 22-1-2, relating to the nature of eminent domain, and inserting in its place a new Code section to read as follows:

"22-1-2.

(a) The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the General Assembly may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defenses, or providing channels for trade or travel. Notwithstanding any other provisions of law, neither this state nor any political subdivision thereof nor any other condemning authority shall use eminent domain unless it is for public use. Public use is a matter of law to be determined by the court and the condemnor bears the burden of proof.

(b) All condemnations shall not be converted to any use other than a public use for 20 years from the initial condemnation.

(c)(1) If property acquired through the power of eminent domain from an owner fails to be put to a public use within five years, the former property owner may apply to the condemnor or its successor or assign for reconveyance or quitclaim of the property to the former property owner or for additional compensation for such property. For purposes of this subsection, property shall be considered to have been put to a public use at the point in time when substantial good faith effort has been expended on a project to put the property to public use, notwithstanding the fact that the project may not have been completed. The application shall be in writing, and the condemnor or its successor or assign shall act on the application within 60 days by:

(A) Executing a reconveyance or quitclaim of the property upon receipt of compensation not to exceed the amount of the compensation paid by the condemnor at the time of acquisition; or

(B) Paying additional compensation to the former owner of the property, such compensation to be calculated by subtracting the price paid by the condemnor for the property at the time of acquisition from the fair market value of the property at the time the application is filed.

(2) If the condemnor fails to take either action within 60 days, the former property owner may, within the next 90 days following, initiate an action in the superior court in the county in which the property is located to reacquire the property or receive additional compensation.

(3) The condemnor shall provide notice to each former owner of the property prior to acquisition if the condemnor fails to put such property to a public use within five years. The condemnee shall have one year from the date notice is received to bring an application under this subsection.

(d) In the case that property is acquired from more than one owner for the same public use and reconveyance or additional compensation to a single owner is impracticable, any party to the original condemnation or each person with a legal claim in such condemnation may file an action in the superior court in the county in which the property is located for an equitable resolution.

(e) This Code section shall not apply to condemnations subject to Code Section 22-3-162 or Title 32."

## **SECTION 5.**

Said title is further amended by inserting new Code sections to read as follows:

1 "22-1-9.

2 In order to encourage and expedite the acquisition of real property by agreements with  
3 owners, to avoid litigation and relieve congestion in the courts, to assure consistent  
4 treatment for property owners, and to promote public confidence in land acquisition  
5 practices, all condemnations and potential condemnations shall, to the greatest extent  
6 practicable, be guided by the following policies and practices:

7 (1) The condemning authority shall make every reasonable effort to acquire  
8 expeditiously real property by negotiation;

9 (2) Where the condemning authority seeks to obtain a fee simple interest in real property,  
10 real property shall be appraised before the initiation of negotiations, and the owner or his  
11 or her designated representatives shall be given an opportunity to accompany the  
12 appraiser during his or her inspection of the property, except that the condemning  
13 authority may, by law, rule, regulation, or ordinance, prescribe a procedure to waive the  
14 appraisal in cases involving the acquisition by sale or donation of property with a low fair  
15 market value;

16 (3) Before the initiation of negotiations for fee simple interest for real property the  
17 condemning authority shall establish an amount which it believes to be just compensation  
18 and shall make a prompt offer to acquire the property for the full amount so established.  
19 In no event shall such amount be less than the condemning authority's independent  
20 appraisal of the fair market value of such property. The condemning authority shall  
21 provide the owner of real property to be acquired with a written statement of, and  
22 summary of the basis for, the amount he or she established as just compensation. Where  
23 appropriate, the just compensation for the real property acquired and for damages to  
24 remaining real property shall be separately stated. The condemning authority shall  
25 consider alternative sites suggested by the owner of the property as of the compensation  
26 offered;

27 (4) No owner shall be required to surrender possession of real property before the  
28 condemning authority pays the agreed purchase price or deposits with the court in  
29 accordance with this title, for the benefit of the owner, an amount not less than the  
30 condemning authority's appraisal of the fair market value of such property or the amount  
31 of the award of compensation in the condemnation proceeding for such property;

32 (5) The construction or development of a project for public use shall be so scheduled  
33 that, to the greatest extent practicable, no person lawfully occupying real property shall  
34 be required to move from a dwelling or to move his or her business or farm operation  
35 without at least 90 days' written notice from the condemning authority of the date by  
36 which such move is required;

(6) If the condemning authority permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the condemning authority on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier;

(7) In no event shall the condemnor act in bad faith in order to compel an agreement on the price to be paid for the property;

(8) If any legal interest in real property is to be acquired by exercise of the power of eminent domain, the condemning authority shall institute formal condemnation proceedings. No condemnor shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his or her real property; and

(9) A person whose real property is being acquired in accordance with this title may, after the person has been fully informed of his or her right to receive just compensation for such property, donate such property, any part thereof, any legal interest therein, or any compensation paid to a condemning authority, as such person shall determine.

22-1-10.

(a) Prior to exercising the power of eminent domain, a governmental condemnor shall:

(1) Not less than 15 days before any meeting at which a resolution approving the exercise of eminent domain is to be considered, post a sign, if possible, in the right of way adjacent to each property that is subject to the proposed use of the eminent domain power stating the time, date, and place of such meeting;

(2) Attempt to serve the condemnee personally with notice of the meeting not less than 15 days before any meeting at which such resolution is to be considered, unless service is acknowledged or waived by the condemnee. If the attempted service is unsuccessful, service of notice may be satisfied by mail or statutory overnight delivery to the property owner at the address of record and, if different from the property owner, to the parties in possession of the property, return receipt requested;

(3) Ensure that any notice that is required by law to be published be placed in the county legal organ, but such notice shall not be published in the legal notices section of such newspaper; and

(4) Ensure that any meeting at which such resolution is to be considered and voted on shall commence after 6:00 P.M.

Any such resolution shall specifically and conspicuously delineate each parcel to be affected.

(b) A nongovernmental condemnor shall, with respect to its exercise of the power of eminent domain in general, by action of the governing body or chief executive officer of

1 the condemnor designate who is authorized to approve the exercise of the power of eminent  
2 domain by the condemnor and provide a method for documenting the time of the exercise  
3 of final approval of a particular exercise of the power of eminent domain by that individual  
4 or group of individuals. Such a condemning authority shall with respect to any particular  
5 exercise of the power of eminent domain:

6 (1) Not less than 15 days before the documented time of approval of the exercise of  
7 eminent domain, post a sign, if possible, in the right of way adjacent to each property that  
8 is subject to the proposed use of the eminent domain power stating: (A) that the property  
9 is subject to a proposed condemnation which may be initiated after 15 days from the date  
10 of posting; (B) the date of posting; and (C) the name, business address, and telephone  
11 number of the condemnor;

12 (2) Not less than 15 days before the documented time of approval of the exercise of  
13 eminent domain serve the condemnee personally with notice of the proposed  
14 condemnation stating: (A) that the property is subject to a proposed condemnation which  
15 may be initiated after 15 days from the date of service; (B) the date of service; and (C)  
16 the name, business address, and telephone number of the condemnor. If the attempted  
17 service is unsuccessful, service of notice may be satisfied by mail or statutory overnight  
18 delivery to the property owner at the address of record and, if different from the property  
19 owner, to the parties in possession of the property, return receipt requested; and

20 (3) Provide the condemnee with an opportunity to meet with the individual or group of  
21 individuals having the power of documented approval or a representative of such  
22 individual or individuals.

23 (c) The condemnee may in writing waive any rights of the condemnee under this Code  
24 section.

25 (d) Any notice required to be personally served or mailed under this Code section shall be  
26 accompanied by a written statement of the rights that the condemnee possesses including  
27 but not limited to the right to notice, damages, hearing, and appeal of any award entered  
28 by the special master as described in this title. The written statement of rights shall also  
29 include the right to bring a motion pursuant to Code Section 22-1-11 as well as a sample  
30 motion. The Department of Community Affairs shall promulgate written notice of rights  
31 forms that shall be used for purposes of this subsection. The Department of Community  
32 Affairs shall promulgate different notice forms for each of the types of condemnation  
33 proceedings authorized by law. This subsection shall not become effective until the  
34 Department of Community Affairs has promulgated the written notice of rights forms  
35 contemplated under this subsection and such forms shall be promulgated no later than  
36 January 1, 2007.



(e) This Code section shall not apply to condemnations for the purposes of constructing or expanding one or more electric transmission lines, to condemnations pursuant to Code Section 46-8-121, or to any condemnations under Title 32.

22-1-10.1.

(a) Except as provided in subsections (b) and (c) of this Code section, no action for condemnation may be brought in any court of this state until at least 30 days after the date of the resolution or documented approval described in Code Section 22-1-10.

(b) If an emergency condition exists requiring the acquisition of property for the protection of the public health and safety, the condemnor may declare the existence of an emergency and adopt a resolution defining the emergency. Notice and hearing as required by Code Section 22-1-10 may be waived by the condemning body in an emergency condition.

(c) This Code section shall not apply to the acquisition or condemnation of property where consent is received from each person with a legal claim that has been identified or found.

22-1-11.

Before the vesting of title in the condemnor and upon motion of the condemnee, or within ten days of the entry of the special master's award by entry of exception to the case, the court shall determine whether the exercise of the power of eminent domain is for a public use and whether the condemning authority has the legal authority to exercise the power of eminent domain and may stay other proceedings of the condemnation pending the decision of the court. The condemning authority shall bear the burden of proof by the evidence presented that the condemnation is for a public use as defined in Code Section 22-1-1. Nothing in this Code section shall be construed to require the condemnee to seek or obtain a special master's award prior to a hearing or decision by the court under this Code section.

22-1-12.

In all actions where a condemning authority exercises the power of eminent domain, the court having jurisdiction of a proceeding instituted by a condemnor to acquire real property by condemnation shall award the owner of any right or title to or interest in such real property such sum as will in the opinion of the court reimburse such owner for his or her reasonable costs and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

(1) The final judgment is that the condemning authority cannot acquire the real property by condemnation; or

(2) The proceeding is abandoned by the condemning authority.

22-1-13.

In addition to the types of relocation damages permissible under law, any condemnee that is displaced as a result of the condemnation shall be entitled to:

(1) Actual reasonable expenses in moving himself or herself, his or her family, business, farm operation, or other personal property within a reasonable distance from the property condemned;

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation;

(3) Such other relocation expenses as authorized by law; and

(4) With the consent of the condemnee, the condemnor may provide alternative site property as full or partial compensation.

22-1-14.

(a) When property is condemned under this title or any other title of this Code, the value of the condemned property may be determined through lay or expert testimony and its admissibility shall be addressed to the sound discretion of the court.

(b) If any party to a condemnation proceeding seeks to introduce expert testimony as to the issue of just and adequate compensation, Code Section 24-9-67.1 shall not apply."

#### SECTION 6.

Said title is further amended by repealing Code Section 22-2-84.1, relating to appeals to superior court from assessor's award, reasonable expenses, and liability of cost relating to issues of law.

#### SECTION 7.

Said title is further amended by striking Code Section 22-2-100, relating to the definition of "condemning body" and "condemnor," and inserting in its place a new Code section to read as follows:

"22-2-100.

As used in this article, 'condemning body' or 'condemnor' means:

(1) The State of Georgia or any branch or any department, board, commission, agency, or authority of the executive branch of the government of the State of Georgia;

(2) Any county or municipality of the State of Georgia;

(3) Any housing authority with approval of the governing authority of the city or county as provided in Code Section 8-3-31.1;

(4) Any other political subdivision of the State of Georgia which is ~~vested with~~ possesses the power of eminent domain; and

(5) All public utilities that possess the right or power of eminent domain. ~~All other persons possessing the right or power of eminent domain."~~

#### SECTION 8.

Said title is further amended by striking Code Section 22-2-102, relating to filing a petition of condemnation and certain requirements and rights attached to said petition, and inserting in its place a new Code section to read as follows:

"22-2-102.

(a) In addition to the requirements set forth in Chapter 1 of this title, whenever ~~Whenever~~ it is desirable, for any reason, to arrive at a quick and certain determination of the compensation to be paid first to the condemnee for the taking or damaging of private property, the condemnor shall:

(1) File ~~file~~ a petition in a superior court having jurisdiction for a judgment in rem against the property or interest therein, as provided in Code Section 22-2-130; and

(2) At or before the filing of the petition, the condemnor shall ~~present~~ a copy of the petition to a judge of the superior court of the county wherein the property or interest sought to be condemned is located. Thereupon, unless waived by the parties the judge shall have a hearing in court, in chambers, or by telephone with the parties not less than ten days nor more than 30 days from the filing of the petition to appoint a special master.

After such hearing, the judge shall make an order requiring the condemnor, the person in possession of the property or interest, and ~~any other person known to have any rights in the property~~ each person with a legal claim or interest to appear at a hearing before a special master at a time and place specified in the order and to make known their rights, if any, in and to the property or interest sought to be condemned, their claims as to the value of the property or interest, and any other matters material to their respective rights.

~~Except in condemnations for purposes of constructing or expanding one or more electric transmission lines, the~~

(b) The hearing before the special master shall take place not less than ten ~~ten~~ 30 days nor more than ~~15~~ 60 days after the date of ~~service~~ the entry of the order appointing the special master. ~~In condemnations for purposes of constructing or expanding one or more electric transmission lines, the hearing before the special master shall take place not less than 30 days and not more than 40 days after the date of service of the order.~~

(c) The order shall give such directions for notice and the service thereof as are appropriate and as are consistent with this article, in such manner as to provide most effectively an

1 opportunity to all parties at interest to be heard. In condemnations for purposes of  
2 constructing or expanding one or more electric transmission lines, in addition to service of  
3 the order, a copy of the order shall be mailed by certified mail or sent by statutory overnight  
4 delivery to any person shown by the public ad valorem tax records of the county in which  
5 the property is located to have an interest in the property and to any other person having  
6 open and obvious possession of the property. It shall not be necessary to attach any other  
7 process to the petition except the order so made, and the cause shall proceed as in rem."

#### 8 SECTION 9.

9 Said title is further amended by striking Code Section 22-2-102.1, relating to petitioning  
10 superior court for judgment in rem in cases of eminent domain, and inserting in its place a  
11 new Code section to read as follows:

12 "22-2-102.1.

13 In addition to the requirements set forth in Code Section 22-1-10, whenever ~~Whenever~~ it  
14 shall be necessary for such condemning body to take or damage private property, or any  
15 interest or easement therein, in pursuance of any law so authorizing, for any public ~~purpose~~  
16 use, and where, by reason of the necessities of the public needs, of which the condemning  
17 body shall be the exclusive judge, and it shall be desirable for these reasons to have a quick  
18 and effective adjudication of the just and adequate compensation to be paid the owner or  
19 owners of such property before taking the same, and it shall be desirable to have a judicial  
20 ascertainment and judicial supervision of all questions and proceedings connected with the  
21 matter, such condemning body may, through any authorized representative, petition the  
22 superior court of the county having jurisdiction, for a judgment in rem against said  
23 property, or any easement or other interest in said property, condemning the same in fee  
24 simple to the use of the petitioner upon payment of just and adequate compensation  
25 therefor."

#### 26 SECTION 10.

27 Said title is further amended by striking Code Section 22-2-102.2, relating to contents of  
28 petition to superior court for judgment in rem in cases of eminent domain, and inserting in  
29 its place a new Code section to read as follows:

30 "22-2-102.2.

31 The petition referred to in Code Section 22-2-102.1 shall set forth:

- 32 (1) The facts showing the right to condemn;  
33 (2) The property or interest to be taken or damaged;

(3) The names and residences of the persons whose property or interests are to be taken or otherwise affected, so far as known;

(4) A description of any unknown persons or classes of unknown persons whose rights in the property or interest are to be affected; ~~and~~

(5) A statement setting forth the necessity to condemn the private property and describing the public use for which the condemnor seeks the property; and

~~(5)~~(6) Such other facts as are necessary for a full understanding of the cause."

#### SECTION 11.

Said title is further amended by striking Code Section 22-2-106, relating to compensation for special masters, and inserting in its place a new Code section to read as follows:

"22-2-106.

(a) The compensation of the special master shall be provided for by a proper order of the judge of the superior court; shall be included in and made a part of the judgment of the court condemning the property or any interest therein sought to be taken, such judgment to be based on the award of the special master; and shall be paid by the condemning body; ~~and shall not be less than 50.00 per day nor more than \$250.00 per day for the time actually devoted to the hearing and consideration of the matter by the special master. Such compensation shall be left to the discretion of the court and shall not exceed a reasonable hourly rate consistent with local standards unless otherwise agreed upon by the parties with consent of the court.~~ The compensation of the special master shall be assessed as court costs and shall be paid prior to the filing of any appeal from the judgment of the court; provided, however, that if such compensation has not been determined and assessed at the time of filing any such appeal, the same shall be paid within 30 days from the date of assessment.

(b) The judge may allow the special master a reasonable period of time for personal inspection of the premises and may compensate the special master for his or her time spent inspecting the premises and for any actual expenses incurred by ~~him~~ the special master in connection with the inspection, provided that the special master shall file an affidavit with the court showing his or her time spent in inspection and itemizing his or her expenses."

#### SECTION 12.

Said title is further amended by striking Code Section 22-2-110, relating to the award of the special master in a condemnation hearing and the form used therein, and inserting in its place a new Code section to read as follows:

"22-2-110.

(a) The award of the special master or the special master panel, in the event such a panel exists, shall be served in a manner consistent with Code Section 9-11-5 upon all the parties and filed with the clerk of the superior court of the county where the property or interest is situated within three days after the date on which such hearing is completed. The special master or the special master panel shall mail the award to the condemnor and any condemnees on the date of filing of the award and provide a certificate of service evidencing the mailing of such award.

(b) The award shall become a part of the record of the proceedings in said matter and shall condemn and vest title to the property or other interest in the condemning body upon the deposit by that body of the amount of the award into the registry of the court, subject to the demand of such condemnee or condemnees, according to their respective interests.

(c) The award shall be in the following form:

#### AWARD

The special master appointed and chosen by the court to hear evidence and give full consideration to all matters touching upon the value of the property or interest sought to be condemned, as shown by the description of the property or interest in the case of \_\_\_\_\_ (condemning body) versus \_\_\_\_\_ (acres of land or other described interest in said land) and \_\_\_\_\_ (condemnee), Civil action file no. \_\_\_\_\_ in superior court, having first taken the oath as required by law of the special master, the same having been filed with the clerk of the Superior Court of \_\_\_\_\_ County, and the special master panel, in the event such a panel exists, having heard evidence under oath and given consideration to the value of such property or interest on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_:\_\_\_\_.M., as provided for in the order of the court, do decide and recommend to the court as follows:

(1) I/We find and award to \_\_\_\_\_, condemnee, the sum of \$\_\_\_\_\_, as the actual market value of the property or interest sought to be condemned;

(2) I/We find consequential damages to the remaining property or interest in the amount of \$\_\_\_\_\_;

(3) I/We find consequential benefits to the remaining property or interest in the amount of \$\_\_\_\_\_ (never to exceed the amount of the consequential damages);

(4) I/We find and award to \_\_\_\_\_, condemnee, the sum of \$\_\_\_\_\_, as the value of any associated moving costs;

~~(4)~~(5) Balancing the consequential benefits against the consequential damages, I/we find and award to the condemnee in this case in the total sum of \$\_\_\_\_\_, and I/we

respectfully recommend to the court that the said property or interest be condemned by a judgment in rem to the use of the condemnor upon the payment of the last stated sum into the registry of the court, subject to the demands of the condemnee.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Special Master

\_\_\_\_\_  
Assessor

\_\_\_\_\_  
Assessor

(d) In any case where there is an appeal from the award of the special master or the special master panel, in the event such a panel exists, to a jury in the superior court, such award shall not be competent evidence. Any such appeal shall be a de novo investigation, and such award shall be detached from the papers in the case before the same are delivered to the jury."

### SECTION 13.

Said title is further amended by striking Code Section 22-2-112, relating to the right of appealing the award of the special master in condemnation proceedings, and inserting in its place a new Code section to read as follows:

"22-2-112.

(a) If the condemnor or any condemnee is dissatisfied with the amount of the award, an appeal shall be filed in the superior court and such appeal shall be filed within ten calendar days from the service of the award, plus three additional calendar days for mailing of the award. ~~In case any party is dissatisfied with the amount of the award, he or she may, within ten days after the award is filed, enter in writing an appeal from the award to the superior court of the county where the award is filed. The provisions of Code Section 22-2-84.1, relating to reasonable expenses incurred on appeal, shall apply to any appeal under this Code section.~~ At the term succeeding the filing of the appeal, it shall be the duty of the judge to cause an issue to be made and tried by a jury as to the value of the property or interest taken or the amount of damage done, with the same right to move for a new trial and file an appeal as in other cases at law. The entering of an appeal and the proceedings thereon shall not hinder or delay in any way the condemnor's work or the progress thereof.

(b) The condemnee shall have the right to a jury trial on the issue of just and adequate compensation before the superior court having jurisdiction over the property sought to be

1 condemned during the next term of court following the vesting of title in the condemnor.  
2 This right to a jury trial at the next term of court may be waived by the condemnee."

3 **SECTION 14.**

4 Said title is further amended by striking Code Section 22-2-131, relating to contents in a  
5 petition to the superior court for a judgment in rem, and inserting in its place a new Code  
6 section to read as follows:

7 "22-2-131.

8 (a) The petition referred to in Code Section 22-2-130 shall set forth:

9 (1) The facts showing the right to condemn;

10 (2) The property or interest to be taken or damaged;

11 (3) The names and residences of the persons whose property or interests are to be taken  
12 or otherwise affected, so far as known;

13 (4) A description of any unknown persons or classes of unknown persons whose rights  
14 in the property or interest are to be affected;

15 (5) Such other facts as are necessary for a full understanding of the cause; ~~and~~

16 (6) A statement setting forth the necessity to condemn the private property and  
17 describing the public use for which the condemnor seeks the property; and

18 ~~(6)(7)~~ A prayer for such judgment of condemnation as may be proper and desired.

19 (b) If any of the persons referred to in this Code section are minors or under disability, the  
20 fact shall be stated."

21 **SECTION 15.**

22 Said title is further amended by striking Code Section 22-2-132, relating to requirements of  
23 notice and service upon presenting a petition for a judgment in rem, and inserting in its place  
24 a new Code section to read as follows:

25 "22-2-132.

26 (a) Upon presentation of the petition, the presiding judge ~~may~~ shall issue an order  
27 requiring the condemnor, the owner of the property or of any interest therein, and the  
28 representative of any owner to appear at a time and place named in the order and make  
29 known their objections if any, rights, or claims as to the value of the property or of their  
30 interest therein, and any other matters material to their respective rights; provided,  
31 however, that if the petition includes affidavits from known and located persons with a  
32 legal claim, stating that such condemnees do not oppose the condemnation, no hearing  
33 pursuant to this Code section shall be required.



(b) The day named in the order shall be as early as may be convenient but shall be no less than 20 days from the date of the petition, due regard being given to the necessities of notice.

(c) The order shall give appropriate directions for notice and the service thereof.

(d) It shall not be necessary to attach any other process to the petition except the order referred to in subsection (a) of this Code section, and the cause shall proceed as in rem."

#### SECTION 16.

Said title is further amended by striking Code Sections 22-3-60 and 22-3-63, relating to persons constructing and operating waterworks and sewerage systems authorized to lease, purchase, or condemn property or interests, and inserting in their place new Code sections to read as follows:

"22-3-60.

Any nongovernmental entity constructing, owning, or operating any waterworks or sanitary sewerage system, or both, in this state shall have the right, power, privilege, and authority to lease, purchase, or condemn property or any interest therein, including easements, or to receive donations or grants of property or any interest therein, including easements, for the purpose of constructing and operating a waterworks, a water distribution system, a sewerage collection system, or a sewage treatment and disposal system, or any combination of such systems or facilities; provided, however, that prior to condemning property in any political subdivision, any such entity shall first obtain the consent of the governing authority of such political subdivision, ~~which consent may~~ after the requirements of Code Section 22-1-10 have been satisfied. Consent shall be granted by resolution or ordinance."

"22-3-63.

Any other provision of law to the contrary notwithstanding, any nongovernmental entity which:

(1) Is privately owned and is operated under the collective management and control of the owners;

(2) Was in the business of providing water supply and sewerage collection and disposal prior to July 1, 1978;

(3) Has continuously owned a sanitary sewerage system since July 1, 1978, permitted by the Environmental Protection Division of the Department of Natural Resources; and

(4) On May 1, 2000, owns and operates one or more sewerage collection treatment and disposal systems serving 1,000 or more customers

1 shall have the authority to condemn property or any interest therein, including easements,  
2 for the purpose of constructing and operating a waterworks, a water distribution system,  
3 a sewerage collection system, or a sewage treatment and disposal system, or any  
4 combination of such systems or facilities; provided, however, that such authority shall  
5 obtain the consent of the governing authority of the county or municipality that controls the  
6 land sought to be condemned in accordance with Code Section 22-3-60. The authority  
7 granted by this Code section shall extend only to such counties and those counties  
8 immediately adjacent to such counties in which such entity owned or operated such  
9 waterworks or systems or combination as of January 1, 2000; and provided, further, that  
10 the authority provided for in this Code section shall terminate with respect to any entity if  
11 any interest in such business is transferred to another person or entity except through  
12 inheritance."

#### 13 SECTION 17.

14 Said title is further amended by striking Code Section 22-4-3, relating to the applicability of  
15 Code Section 22-1-1, and inserting in its place a new Code section to read as follows:

16 "22-4-3.

17 The definitions contained in paragraphs ~~(1) and (3)~~ (6) and (8) of Code Section 22-1-1 shall  
18 not apply to this chapter."

#### 19 SECTION 18.

20 Title 23 of the Official Code of Georgia Annotated, relating to equity, is amended by adding  
21 a new Code section to read as follows:

22 "23-3-73.

23 All municipalities, counties, and housing authorities shall have standing pursuant to this  
24 article."

#### 25 SECTION 19.

26 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
27 by striking subsection (b) of Code Section 36-42-8, relating to the powers of downtown  
28 development authorities generally, and inserting a new subsection (b) to read as follows:

29 "(b) The powers enumerated in each paragraph of subsection (a) of this Code section are  
30 cumulative of and in addition to those powers enumerated in the other paragraphs of  
31 subsection (a) of this Code section and elsewhere in this chapter; and no such power limits  
32 or restricts any other power of the authority except that, notwithstanding any other

provision of this chapter, no authority described in this chapter shall be granted the power of eminent domain."

#### SECTION 20.

Said title is further amended by repealing Code Section 36-42-8.1, relating to the use of the power of eminent domain by a municipality or downtown development authority.

#### SECTION 21.

Said title is further amended by repealing subsection (c) of Code Section 36-44-6, relating to a redevelopment agency's ability to delegate the power of eminent domain, which reads as follows:

"(c) A downtown development authority which has been designated as a redevelopment agency pursuant to this chapter may exercise the powers of eminent domain subject to the procedures established in Chapter 42 of this title."

#### SECTION 22.

Said title is further amended in Chapter 61, the "Urban Redevelopment Law," by adding after Code Section 36-61-3 a new Code Section 36-61-3.1 to read as follows:

"36-61-3.1.

(a) As used in this Code section, the term 'public use' shall have the meaning specified in Code Section 22-1-1.

(b) Any exercise of the power of eminent domain under this chapter must:

(1) Be for a public use; and

(2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10."

#### SECTION 23.

Said title is further amended by designating the existing text of Code Section 36-62-6, relating to the general powers of a development authority, as subsection (a) and by adding a new subsection, to be designated subsection (b), to read as follows:

"(b) This Code section shall not be construed as authorizing an authority as defined in this chapter to exercise the power of eminent domain."

#### SECTION 24.

1 Said title is further amended by striking paragraph (1) of subsection (a) of Code Section  
2 36-82-62, relating to power as to undertakings and issuance of revenue bonds by government  
3 bodies, and inserting in its place a new paragraph (1) to read as follows:

4 "(1) To acquire, by gift, purchase, or the exercise of the right of eminent domain, and to  
5 construct, to reconstruct, to improve, to better, and to extend any undertaking wholly  
6 within or wholly outside the governmental body or partially within and partially outside  
7 the governmental body; and to acquire, by gift, purchase, or the exercise of the right of  
8 eminent domain, lands, easements, rights in lands, and water rights in connection  
9 therewith. For property located within a city, the extraterritorial exercise of eminent  
10 domain for redevelopment purposes shall be approved by resolution by the governing  
11 authority of the city. For property located in an unincorporated area of a county, the  
12 extraterritorial exercise of eminent domain for redevelopment purposes shall be approved  
13 by resolution by the governing authority of the county. Any such resolution shall be  
14 adopted under the procedures specified in Code Section 22-1-10 and shall specifically  
15 and conspicuously delineate each parcel to be affected. The requirement for approval by  
16 a governing authority under this Code section shall be in addition to any other approval  
17 required by Title 22;".

#### 18 SECTION 25.

19 Except as provided in this section, this Act shall become effective upon its approval by the  
20 Governor or upon its becoming law without such approval and shall only apply to petitions  
21 for condemnation filed on or after that date. Sections 2, 3, 6, 12, 13, 17, and 22 and Code  
22 Sections 22-1-11, 22-1-12, 22-1-13, and 22-1-14 as enacted by Section 5 of this Act shall  
23 apply to those condemnation proceedings filed on or after February 9, 2006, where title has  
24 not vested in the condemning authority unless constitutionally prohibited.

#### 25 SECTION 26.

26 All laws and parts of laws in conflict with this Act are repealed.